

## REMARKS

The antecedent objection to claim 19 has been obviated in the manner kindly suggested by Examiner Novosad.

Claims 19-22 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Golden '179.

This rejection is respectfully traversed. **Please note that since “said pivot axis” 44 of the Golden '179 structure is not fixed with respect to the engine” as recited in independent claims 19 and 20, that these claims are not anticipated by Golden '179.** See the attached color coded (1) Office Action, (2) claims 19 and 20 of the instant application, (3) Fig. 2 of the instant application and (4) Figs. 1 and 2 of Golden '179. Claims 19-22 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Golden '179.

Claims 19-22 have been rejected under 35 U.S.C. § 102(b) as being anticipated by German Patent '104.

This rejection is respectfully traversed. **Please note that since “said pivot axis” 44 of the structure of German Patent '104 is not fixed with respect to the engine” as recited in independent claims 19 and 20” as recited in independent claims 19 and 20, that these claims are not anticipated by the German Patent '102.** See the attached color coded (1) Office Action, (2) claims 19 and 20 of the instant application, (3) Fig. 2 of the instant application and (4) Fig. 1 of German Patent '102.

Claims 19-22 have been rejected under 35 U.S.C. § 102(b) as being anticipated by German Patent '151.

This rejection is respectfully traversed. **Please note that since “said pivot axis” 44 of the structure of German Patent ‘151 is not fixed with respect to the engine” as recited in independent claims 19 and 20” as recited in independent claims 19 and 20, that these claims are not anticipated by the German Patent ‘151.** See the attached color coded (1) Office Action, (2) claims 19 and 20 of the instant application, (3) Fig. 2 of the instant application and (4) Fig. 1 of German Patent ‘151.

Accordingly, since all claims 19-22 which are being examined are clearly allowable, a notice to that effect is earnestly solicited.

Respectfully submitted,

Mark Unzicker et al

Nov. 4, 2004  
Date

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## DETAILED ACTION

### *Election/Restriction*

Applicant's election without traverse of group II, i.e., claims 19-22, in the reply filed on July 14, 2004 is acknowledged. Accordingly, claims 5-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

### *Claim Objections*

Claim 19 is objected to because it appears that --the-- should be inserted before "head" in line 11 since a "head shaft" has already been set forth in line 8. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,266,179 (Golden '179).

*With respect to claim 19*, Golden '179 discloses an excavating apparatus ( Figures 1, 2, and 4) having a prime mover (10) with a longitudinal centerline (not shown) and comprising a



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pivot axis numbered  
44 in Fig. 2

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main frame (14, 18, 12, 28, 26) with an engine (10), a ground drive system (unnumbered - see

Figure 1) and an excavation boom (42) operatively attached at a [REDACTED] hereto, said

excavation boom comprising a first end (52) and a second end (48), said first end (52) being

operatively pivotally attached to said main frame at the [REDACTED], said [REDACTED] being

transverse to the longitudinal centerline of said prime mover, said [REDACTED] being fixed with

respect to the engine, a head shaft (unnumbered) operatively attached to the second end (48) of

said boom along a head shaft axis (unnumbered), said head shaft axis being transverse to the

longitudinal centerline of the prime mover; and wherein said boom (42) further includes a tilt

axis (unnumbered) allowing head shaft (unnumbered) to pivot along the tilt axis which is fixed

substantially perpendicular with respect to said [REDACTED] (unnumbered).

NOT

With respect to claims 20-22, Golden '179 discloses an excavating apparatus (Figures 1, 2, and 4) having a prime mover (10) with a longitudinal centerline (not shown) and comprising a

main frame (14, 18, 12, 28, and 26) with an engine (10), a ground drive system (unnumbered -

see Figure 1) and an excavation boom (42) operatively attached at a [REDACTED] (unnumbered)

thereto, said excavation boom comprising a first end (52) and a second end (48), said first end

(52) being operatively pivotally attached to said main frame at the [REDACTED], said [REDACTED]

being transverse to the longitudinal centerline of said prime mover, said [REDACTED] being fixed

with respect to the engine; a head shaft (unnumbered) operatively attached to the second end of

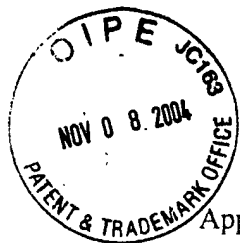
said boom along a head shaft axis (unnumbered), said head shaft axis being transverse to the

longitudinal centerline of the prime mover; and wherein said head shaft is also operatively

pivotally attached to said excavation boom along a tilt axis (unnumbered); wherein the tilt axis is

fixed substantially perpendicular to said [REDACTED] (unnumbered), and wherein the tilt axis

NOT



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(unnumbered) is fixed substantially parallel to a line substantially perpendicular to said pivot axis (unnumbered).

Claims 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent No. DE 3207104 (German '104).

*With respect to claim 19*, German '104 discloses an excavating apparatus (Figure 1) having a prime mover (7) with a longitudinal centerline (not shown) and comprising a main frame (2) with an engine (7), a ground drive system (unnumbered) and an excavation boom (4) operatively attached at a [REDACTED] thereto, said excavation boom (4) comprising a first end (adjacent 26) and a second end (adjacent 30), said first end being operatively pivotally attached to said main frame (2) at a [REDACTED] said [REDACTED] being transverse to the longitudinal centerline of said prime mover, said [REDACTED] being fixed with respect to the engine, a head shaft portion between members 30 in Figure 3 operatively attached to the second end (adjacent 30) of said boom along a head shaft axis (about which members 30 rotate), said head shaft axis being transverse to the longitudinal centerline (not shown) of the prime mover; and wherein said boom further includes a tilt axis (unnumbered - adjacent 3 in Figure 1) allowing head shaft to pivot along the tilt axis which is fixed substantially perpendicular with respect to [REDACTED]

(NOT)

*With respect to claims 20-22*, German '104 discloses an excavating apparatus (Figure 1) having a prime mover (7) with a longitudinal centerline (not shown) and comprising a main frame (2) with an engine (7), a ground drive system (unnumbered) and an excavation boom (4) operatively attached at a [REDACTED] thereto, said excavation boom (4) comprising a first end (adjacent 26) and a second end (adjacent 30), said first end being operatively pivotally attached to said main frame (2) at the [REDACTED] said pivot axis being transverse to the longitudinal



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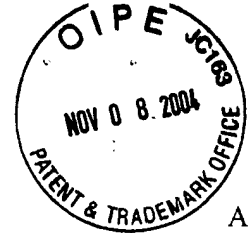
centerline of said prime mover, said [REDACTED] being fixed with respect to the engine, a head shaft (portion between members 30 in Figure 3) operatively attached to the second end (adjacent 30) of said boom along a head shaft axis (about which members 30 rotate); said head shaft axis being transverse to the longitudinal centerline (not shown) of the prime mover; and wherein said head shaft is also operatively pivotally attached to said excavation boom along a tilt axis (unnumbered - adjacent 3 in Figure 1); wherein the tilt axis is fixed substantially perpendicular to said [REDACTED], and wherein the tilt axis is fixed substantially parallel to a line substantially perpendicular to said [REDACTED].

NOT

Claims 19-22 are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent No. 19858151 (German '151).

*With respect to claim 19*, German '151 discloses an excavating apparatus (10) having a prime mover (12a) with a longitudinal centerline (not shown) and comprising a main frame (12, 14) with an engine (12a), a ground drive system (12b) and an excavation boom (18) operatively attached at a [REDACTED] thereto, said excavation boom comprising a first end (unnumbered) and a second end (unnumbered), said first end being operatively pivotally attached to said main frame at the [REDACTED] (unnumbered), said [REDACTED] being transverse to the longitudinal centerline of said prime mover (12a), said [REDACTED] being fixed with respect to the engine, a head shaft (18c) operatively attached to the second end (unnumbered) of said boom (18) along a head shaft axis (18c), said head shaft axis being transverse to the longitudinal centerline of the prime mover; and wherein said boom further includes a tilt axis (AD) allowing head shaft (18c) to pivot along the tilt axis which is fixed substantially perpendicular with respect to said [REDACTED] (unnumbered).

NOT



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*With respect to claims 20-22, German '151 discloses an excavating apparatus (10) having a prime mover (12a) with a longitudinal centerline (not shown) and comprising a main frame (12, 14) with an engine (12a), a ground drive system (12b) and an excavation boom (18) operatively attached at a pivot axis (unnumbered) thereto, said excavation boom comprising a first end (unnumbered) and a second end (unnumbered), said first end being operatively pivotally attached to said main frame at the pivot axis (unnumbered), said [REDACTED] being transverse to the longitudinal centerline of said prime mover (12a), said [REDACTED] (unnumbered) being fixed with respect to the engine, a head shaft (18a) operatively attached to the second end (unnumbered) of said boom (18) along a head shaft axis (18c), said head shaft axis being transverse to the longitudinal centerline of the prime mover; and wherein said head shaft is also operatively pivotally attached to said excavation boom along a tilt axis; wherein the tilt axis is fixed substantially perpendicular to said [REDACTED] and wherein the tilt axis is fixed substantially parallel to a line substantially perpendicular to said [REDACTED]*

(NOT)

#### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chris Novosad whose telephone number is (703) 308-2246. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (703) 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



19. (Amended) An excavating apparatus having a prime mover with a longitudinal centerline and comprising a ~~main frame~~ with an engine, a ground drive system and an excavation boom operatively attached at a ~~point~~ thereto, said excavation boom comprising:

- a first end and a second end, said first end being operatively pivotally attached to said main frame at ~~the first end~~ being transverse to the longitudinal centerline of said prime mover, ~~the first end~~ being fixed with respect to the engine;

- a head shaft operatively attached to the second end of said boom along a head shaft axis, said head shaft axis being transverse to the longitudinal centerline of the prime mover; and

- wherein said boom further includes a tilt axis allowing the head shaft to pivot along the tilt axis which is fixed substantially perpendicular with respect to said pivot axis.



20. (New) An excavating apparatus having a prime mover with a longitudinal centerline and comprising a main frame with an engine, a ground drive system and an excavation boom operatively attached at [REDACTED] thereto, said excavation boom comprising:

- a first end and a second end, said first end being operatively pivotally attached to said main frame at [REDACTED], [REDACTED] being transverse to the longitudinal centerline of said prime mover, [REDACTED] being fixed with respect to the engine;

- a head shaft operatively attached to the second end of said boom along a head shaft axis, said head shaft axis being transverse to the longitudinal centerline of the prime mover; and

- wherein said head shaft is also operatively pivotally attached to said excavation boom along a tilt axis.